

AFRICA RISK CONSULTING

Zambia Monthly Briefing May 2017

Zambia Summary 29 May 2017

The Lusaka Magistrates Court sides with jailed opposition United Party for National Development (UPND) leader Hakainde Hichilema over his charges of treason, disobeying a police officer and using insulting language, although he remains in custody. President Edgar Lungu (2015-present) orders state-owned investment vehicle ZCCM Investment Holdings (ZCCM-IH) to drop a lawsuit in Zambia against Canada-based mining company First Quantum Minerals (FQM). The central Bank of Zambia (BoZ) monetary policy committee (MPC) lowers its benchmark interbank lending rate from 14% to 12.5%, reflecting a positive economic outlook after a bumper maize harvest in the 2016/2017 growing season, and increased gross domestic product (GDP) growth projections of over 4%.

Courts allow Hichilema to challenge treason charge, as other charges are dropped

The Lusaka Magistrates Court has sided with jailed opposition **United Party for National Development (UPND)** leader **Hakainde Hichilema** over his charges of treason, disobeying a police officer and using insulting language (see *ARC Briefing Zambia April 2017*). Hichilema's arrest in April has drawn widespread regional and international criticism of **Zambia**, and put the reputation of the judiciary and state prosecutors into question. Magistrate **David Simusamba** of Lusaka Magistrates Court ruled on 26 May that Hichilema's legal team could challenge the charges via judicial review prior to the case going before the **Lusaka High Court**.¹ Simusamba ruled that the police officer who issued the trial papers with charges of treason did not have the authority to do so – opening up the charges to judicial scrutiny.² Hichilema's team has until 12 June to launch a challenge or else the charges will go forward to the High Court.³

"It is comforting that the courts can show the world that Zambia does have an independent and serious judicial system ... legally these charges should be dropped and I am confident that this is what will happen...the judicial review is likely to recommend that Hichilema not face them, no matter how angry that might make the president."⁴

The treason charge is the last remaining charge that the state brought against Hichilema after he allegedly blocked the motorcade of the president, **Edgar Lungu** (2015-present), on the way to an event in April (see *ARC Briefing Zambia April 2017*).⁵ The state entered a *nolle prosequi* (opt not to prosecute) plea on 11 May to the charge of disobeying orders.⁶ The charge allows prosecutors to issue a warrant for his arrest on the charge at any time, and prevents Hichilema from clearing his name.⁷ However, it is usually used when prosecutors have no confidence in a trial victory.⁸ Magistrate **Greenwell Malumani**, also of Lusaka Magistrates Court, acquitted Hichilema of using insulting

¹ Lusaka Times, 26 May 2017.

² Lusaka Times, 26 May 2017.

³ Lusaka Times, 26 May 2017.

⁴ Source, senior lawyer, Lusaka

⁵ Zambia Weekly, 25 May 2017.

⁶ Zambia Daily Mail, 11 May 2017.

⁷ Zambia Daily Mail 11 May 2017.

⁸ Zambia Daily Mail 11 May 2017.

language to the president on 15 May.⁹ Malumani criticised the state's case after all four witnesses they called provided contradictory accounts of the alleged offence. He accused the arresting officer, **Mbita Mpazi**, of arresting Hichilema on the basis of media reports and without either an official complaint or any evidence.¹⁰ Another witness admitted to the courtroom that he had falsified an evidence report and lied under oath.¹¹ Malumani told the court that:

*"This paints a very gloomy picture of lack of professionalism on the part of **Zambia Police** ... The prosecution has failed to convince me that there was no bias and malice. The danger of false implication cannot be ruled out."*¹²

The case has drawn international criticism of the Zambian judicial system. **Transparency International's** Zambia branch has regularly criticised the imprisonment of a leader or political figure on treason charges.¹³ The **European Parliament** passed a resolution on 16 May calling for Hichilema's immediate release, and for the Zambian judiciary to show independence from political interference.¹⁴ The **United States (US)** has also criticised the arrest.¹⁵ The ruling **Patriotic Front (PF)** are concerned that the arrest will spark protests, and there is a heavy police presence around the trials. The government also deported **South African** opposition **Democratic Alliance** leader **Mmusi Maimane** on 25 May for attempting to visit Hichilema in prison.¹⁶ The deportation highlighted complaints from the UPND that the prison service is not allowing Hichilema and his co-accused to see visitors.¹⁷

*"This entire case is a waste of judicial time and resources; it is putting all of Zambia in a bad light, may discourage investment and shows that Lungu will manipulate the state to his own end."*¹⁸

The rulings in Hichilema's favour show that the charges originate from pro-PF police and prosecutors wanting to hurt the UPND. The lacklustre prosecution and poorly concealed, falsified witness statements do not point to high-level orchestration of the charges. The director of public prosecutions, **Lilian Shawa Siyuni**, has not signed any of the legal documents, and junior prosecutors are handling the cases.¹⁹ However, the silence from the political elite – not just the PF, but also former presidents such as Zambia's first president, **Kenneth Kaunda** (1964-1991), and former president, **Rupiah Banda** (2008-2011) – is notable. Lungu himself repeatedly states that he had no part in the charges, but will not interfere in the judicial process. However, by letting the charges stand, Lungu and the PF are attempting to extend the imprisonment of Hichilema for as long as possible. They will let incompetent prosecutors and policemen take the blame for the charges, but still intimidate Hichilema and other UPND leaders. Despite the heated political environment, the judiciary is holding the charges to a high standard, against the apparent push by Lungu to let Hichilema stay in prison.

Government halts ZCCM lawsuit against FQM

President Lungu has reportedly ordered state-owned investment vehicle **ZCCM Investment Holdings (ZCCM-IH)** to drop a lawsuit in Zambia against **Canada**-based mining company **First Quantum Minerals (FQM)**.²⁰ FQM is Zambia's largest producer of copper – Zambia's largest export commodity – and has had a difficult relationship with government in the past (see *ARC Briefing Zambia* February-

⁹ Zambia Reports, 15 May 2017.

¹⁰ Zambia Reports, 15 May 2017.

¹¹ Zambia Reports, 15 May 2017.

¹² Zambia Weekly, 18 May 2017.

¹³ Zambia Weekly, 11 May 2017.

¹⁴ European Parliament, 16 May 2017.

¹⁵ Zambia Weekly, 11 May 2017.

¹⁶ Business Live, 25 May 2017.

¹⁷ Business Live, 25 May 2017.

¹⁸ Source, UPND-linked lawyer, Lusaka

¹⁹ Zambia Weekly 25 May 2017.

²⁰ Zambia Weekly, 11 May 2017.

April 2016). The litigation against FQM involves the **Kansanshi** copper mine, a venture FQM first bought into in 2001 and in which the ZCCM-IH has a 20% stake.²¹ In an arbitration case in the **United Kingdom (UK)**, ZCCM-IH alleges that FQM breached the terms of its contract with ZCCM-IH by borrowing \$2.1 billion in loans against the Kansanshi mine to finance its other operations cheaply through subsidiary **FQM Finance Ltd**.²² ZCCM-IH took FQM, its entities and officers to court in late October 2016. It filed a notice of arbitration on 26 October 2016 against FQM Zambia subsidiaries **Kansanshi Holdings Ltd** and **Kansanshi Mining PLC**. It commenced legal proceedings on 28 October in **Lusaka** against FQM, FQM Finance Ltd, and FQM chairman **Philip K.R. Pascall**; executives **Arthur Mathias Pascal**, **Clive Newall**, **Martin R. Rowley** and **Kansanshi Mining PLC**.²³

Pascall, who is FQM's operations director, wrote to the attorney general, **Likando Kalaluka**, on 26 April asking the government not to pursue the charges in Zambia while the UK arbitration case is ongoing.²⁴ Pascall argued that *"pursuing parallel proceedings raises a substantial risk of conflicting judgments."*²⁵ Pascall also disputes ZCCM-IH's claim that they had been unaware of the loans and related accounts, and described the litigation as *"vexatious and extraordinary"*²⁶ noting that all alleged loss of profit had been paid back into Kansanshi mine in the form of investment.²⁷ Pascall also told Kalaluka that ZCCM-IH officials had informed FQM they would be pursuing criminal charges against himself, FQM CEO Philip Pascall and directors Clive Newall and Martin Rowley – alongside the civil charges already laid.²⁸

Presidential spokesperson **Amos Chanda** released a statement on 11 May saying that Lungu had instructed ZCCM-IH to drop the Zambian lawsuit and allow arbitration to continue in the UK.²⁹ The president reportedly told finance minister **Felix Mutati** to intervene directly to oversee the dispute and to bring it to a resolution in June.³⁰ ZCCM-IH is majority-owned by the state, but operates as an independent entity. It is not clear at time of writing whether it will drop the suit in Zambia.³¹

There is a marked difference between Lungu's attitude to a case involving Zambia's largest mining enterprise and the case involving the main opposition leader. Lungu is keen to assure companies operating in Zambia that the government will intervene on their behalf. The ZCCM-IH and FQM case is likely to come down to an interpretation of the terms of the original contract between the two. If the courts awarded ZCCM-IH its full settlement in both cases, FQM would be forced to divest of Kansanshi – which would have a negative impact on the economy. Mutati's direct intervention is likely to result in a greater reduced payout by FQM to avoid any disruption in mining provision.

BoZ drops reserve rate further as bumper harvest improves economic outlook

The **Bank of Zambia (BoZ)** (central bank) monetary policy committee (MPC) lowered its benchmark interbank lending rate from 14% to 12.5% on 17 May.³² The move reflects a positive economic outlook after a bumper maize harvest in the 2016/2017 growing season, and increased gross domestic product (GDP) growth projections of over 4%.³³ The BoZ lowered the benchmark rate for the second time this year – it previously lowered it from 15.5% to 14% in February (see *ARC Briefing*

²¹ www.first-quantum.com

²² Lusaka Times, 14 Nov 2016.

²³ ZCCM-IH filing 31 Jan 2017.

²⁴ Zambia Weekly, 11 May 2017.

²⁵ Zambia Weekly, 11 May 2017.

²⁶ Zambia Weekly, 11 May 2017.

²⁷ Zambia Weekly, 11 May 2017.

²⁸ Zambia Weekly, 11 May 2017.

²⁹ Lusaka Times, 11 May 2017.

³⁰ Lusaka Times, 11 May 2017.

³¹ Lusaka Times, 11 May 2017.

³² Reuters, 17 May 2017.

³³ Reuters, 18 May 2017.

Zambia February 2017) – and the third time since it was introduced in March 2012.³⁴ It also reduced the statutory reserve ratio (the minimum amount of currency financial institutions need to retain) from 15.5% to 12% total funds.³⁵ The decision reflects consumer price index inflation remaining stable at 6.7% across April.³⁶ It also reflects BoZ governor **Denny Kalyalya**'s concern that high rates are confining growth.³⁷

The rate reduction reflects a more general easing of government controls. Agriculture minister **Dora Siliya** lifted the government's ban on export of maize and maize products on 10 May after it announced a bumper harvest for the 2016/2017 season.³⁸ The agriculture ministry estimates a harvest of 3.606m tonnes of maize this year, up by 20.5% from the 2.873m tonnes produced in 2015/2016.³⁹ This harvest, if figures are accurate, would be the largest on record.⁴⁰ Improved rainfall and an increased planting area accounts for the better harvest, which has flourished despite epidemics of pests such as armyworms and migratory locusts.⁴¹ Siliya also granted the **Food Reserve Agency** permission to purchase up to 500,000 tonnes of maize to add to the strategic food reserves – bringing the total up to 30% of annual consumption (roughly 3m tonnes).⁴²

*"The poor harvest for the last two years forced up inflation and, compounded with a low price of copper, has really deflated the Zambian economy...[the rate reduction] is good news – especially for consumers."*⁴³

The improved harvest will drive higher than anticipated growth for Zambia in 2017. Finance ministry permanent secretary **Mukuli Chikuba** told the media on 18 May that GDP growth would be over 4% in 2017, up from 3.2% in 2016.⁴⁴ Chikuba cited the good harvest, improved electricity generation and improved mining production as reasons for the better growth outlook.⁴⁵ The finance ministry has targeted 3.8% GDP growth across the year and is now aiming for growth of over 5% for 2018.⁴⁶ The government is currently negotiating a structured loan facility with the **International Monetary Fund (IMF)**, and will be able to use good growth prospects to gain better terms:

*"It serves the purposes of the government to look as good as possible for the IMF when they start negotiations again in June ... the growth does not negate the structural difficulties with Zambia's economy but it makes them less desperate for the cash."*⁴⁷

Zambia's economy is looking more stable in the short term than it did across 2015 and 2016. Lowering the interbank rates will help stimulate growth as lenders are able to support businesses that have endured years of high inflation and poor electricity provision. The harvest will drive down the price of grain, aiding the consumer and allowing Zambia to begin to rebuild its grain export market. The government's economic growth figures are optimistic – perhaps to set the tone for the IMF – but achievable if mining output is able to hold up across the year. The economy remains heavily dependent on a few key commodities and the structural weaknesses that led to the economic difficulties of the past two years remain. The government will have to increase the cost of living after the IMF deal when subsidies end; the lower interest rates will help cushion the blow by giving easier access to credit.

³⁴ Zambia Weekly, 19 May 2017.

³⁵ Zambia Weekly, 19 May 2017.

³⁶ Reuters, 17 May 2017.

³⁷ Reuters, 17 May 2017.

³⁸ Lusaka Times, 11 May 2017.

³⁹ Lusaka Times, 11 May 2017.

⁴⁰ Lusaka Times, 11 May 2017.

⁴¹ Lusaka Times, 11 May 2017.

⁴² Zambia Weekly 11 May 2017.

⁴³ Source, journalist, Lusaka

⁴⁴ Reuters, 18 May 2017.

⁴⁵ Reuters, 18 May 2017.

⁴⁶ Reuters, 18 May 2017.

⁴⁷ Source, economist, Johannesburg

About Africa Risk Consulting:

Africa Risk Consulting (ARC) is a pan-African consulting company that provides timely, relevant information and advice that enables its clients to take informed investment decisions and to safeguard their reputations.

ARC's core consulting services include integrity due diligence and corporate investigations, political advisory and country assessments, opportunity monitoring and reputation risk management. Most relevant to private equity firms is ARC's integrity due diligence and corporate investigations capability. Specifically, ARC offers pre-deal integrity checks to highlight red flags before negotiations start; full detailed multi-jurisdictional reputation due diligence; and supplier and senior hire vetting and repeat due diligence for compliance programmes. ARC is unique in that it offers a 10-day delivery for a routine integrity due diligence. ARC also offers a suite of corporate investigations services from immediate investigation, evidence gathering, e-discovery, forensic accounting and whistleblower support on one end to crisis media management and regular monitoring on the other.

www.africariskconsulting.com

About ARC Briefing:

ARC Briefing is ARC's essential online business information service.

Companies at any stage in their Africa expansion, whether building or communicating an Africa strategy, investing directly, expanding current operations, financing other investors, doing the legal leg-work or researching the Africa growth trend, need ARC Briefing.

ARC Briefing is an online information service keeping you:

- Up to date with Country Chronologies of business-critical events
- In the know via Country Briefings on political, economic, business and operating trends. Written in-country, ARC experts analyse and comment
- Ahead with Country Planner which details future elections, budgets, regulatory changes etc.

www.briefing.africariskconsulting.com

Getting in touch

Please contact us by email info@africariskconsulting.com or call + 44 (0) 20 7078 4080

Follow us on Twitter: [@ARCBriefing](https://twitter.com/ARCBriefing)